

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

|                                 |   |                               |
|---------------------------------|---|-------------------------------|
| In re Application of            | ) |                               |
|                                 | ) |                               |
| <b>North Custer Radio, Inc.</b> | ) | Facility I.D. No. 49212       |
|                                 | ) | NAL/Acct. No. MB-200941410024 |
| For Renewal of License for      | ) | FRN: 0010298495               |
| FM Translator Station K232CL    | ) | File No. BRFT-20080528ABU     |
| Challis, Idaho                  | ) |                               |

**MEMORANDUM OPINION AND ORDER  
AND  
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: October 15, 2009****Released: October 16, 2009**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. The Commission has before it the captioned application (the "Application") of North Custer Radio, Inc. (the "Licensee"), for renewal of its license for FM Translator Station K232CL, Challis, Idaho (the "Station"). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* ("NAL") issued pursuant to Sections 309(k) and 503(b) of the Communications Act of 1934, as amended (the "Act"), and Section 1.80 of the Commission's Rules (the "Rules"),<sup>1</sup> by the Chief, Audio Division, Media Bureau, by authority delegated under Section 0.283 of the Rules,<sup>2</sup> we find that the Licensee apparently willfully violated Section 73.3539 of the Rules,<sup>3</sup> by failing to file a timely license renewal application for the Station, and apparently willfully and repeatedly violated Section 301 of the Act,<sup>4</sup> by engaging in unauthorized operation of the Station after its authorization had expired. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of seven hundred fifty dollars (\$750), and we grant the captioned K232CL renewal application.

**II. BACKGROUND**

2. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."<sup>5</sup> An application for renewal of K232CL's license should have been filed by June 1, 2005, four months prior to the Station's October 1, 2005, license expiration date,<sup>6</sup> but was not. In fact, the Licensee did not file the renewal application until May 28,

<sup>1</sup> 47 U.S.C. §§ 309(k), 503(b); 47 C.F.R. § 1.80.

<sup>2</sup> See 47 C.F.R. § 0.283.

<sup>3</sup> See 47 C.F.R. § 73.3539.

<sup>4</sup> See 47 U.S.C. § 301.

<sup>5</sup> 47 C.F.R. § 73.3539(a).

<sup>6</sup> See 47 C.F.R. §§ 73.1020, 73.3539(a).

2008. Also on May 28, 2008, the Licensee filed a request for special temporary authorization (“STA”) to continue Station operations pending consideration of the untimely K232CL renewal application.<sup>7</sup> The staff granted the STA Request on June 3, 2008, and it expired on December 3, 2008.<sup>8</sup> The Licensee failed to file a timely request for extension of the STA or seek additional authority to operate the Station after expiration of the 2008 STA.

3. In the Application, the Licensee indicated it was under the impression that the renewal application had been filed but, when a new board member assumed the responsibility for filing the renewal application, he discovered that the process had begun with the assistance of an FCC staff member but had not completed. He then proceeded to complete and file the Application.

### III. DISCUSSION

4. *Proposed Forfeiture.* In this case, the Licensee has failed to file a timely license renewal application for K232CL as required by Section 73.3539(a) of the Rules. Moreover, it continued Station operation for almost two years after its license had expired on October 1, 2005, before filing the appropriate renewal application and request for STA to so operate, in violation of Section 301 of the Act. Moreover, the Licensee has continued to operate the Station for more than 10 months after the 2008 STA expired, an additional violation of Section 301 of the Act. Licensees are obligated to comply fully with the Rules, including filing a timely renewal application and maintaining in effect the station’s authorization.<sup>9</sup> Here, the Licensee did not do so.

5. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have failed willfully or repeatedly to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>10</sup> Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.<sup>11</sup> The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,<sup>12</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>13</sup> Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”<sup>14</sup>

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<sup>7</sup> See File No. BLSTA-20080528AACG (the “2008 STA Request”). On September 21, 2007, the Licensee filed a previous request for STA to continue Station operations. See File No. BLSTA-20070921ABZ. The staff generally will not act on such requests until the licensee has properly filed a license renewal application for the subject station. Accordingly, because the Licensee here did not file a license renewal application for K232CL until May 28, 2008 – at which time it also filed the 2008 STA Request – the staff did not act on the earlier STA request.

<sup>8</sup> Letter to Mr. Jim Hone, 1800B3 (Chief, Audio Division, Media Bureau, June 3, 2008).

<sup>9</sup> See, e.g., *Hemmingford Media, Inc.*, Forfeiture Order, 14 FCC Rcd 2940, 2941-2 (CIB 1999) (responsibility for complying with terms of station license “rests solely and exclusively with the licensee”) (citing *Empire Broadcasting Corp.*, Memorandum Opinion and Order, 25 FCC 2d 68 (1970)).

<sup>10</sup> 47 U.S.C. § 503(b)(1)(B). See also 47 C.F.R. 1.80(a)(1).

<sup>11</sup> 47 U.S.C. § 312(f)(1).

<sup>12</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>13</sup> See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>14</sup> 47 U.S.C. § 312(f)(2).

6 The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$3,000 for the failure to file a required form.<sup>15</sup> The guidelines also specify a base forfeiture amount of \$10,000 for construction and/or operation without an instrument of authorization for the service.<sup>16</sup> In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."<sup>17</sup>

7. In this case, the Licensee failed to file a timely renewal application and continued Station operations for almost two years after the Station's license had expired on October 1, 2005, before filing the appropriate renewal application and a request for STA to so operate, and it continued to operate the Station for more than 10 months after its STA to do so had expired. Nevertheless, because it had previously been licensed to operate Station K232CL, these transgressions are not comparable to "pirate" wireless operations, which typically have been subject to forfeitures of approximately \$10,000. Taking into consideration these facts and all of the factors required by Section 503(b)(2)(D) of the Act and the *Forfeiture Policy Statement*, we will reduce the forfeiture from the base amount to two hundred fifty dollars (\$250) each for the violation of Section 73.3539 of the Rules and for two separate violations of the Section 301 of the Act. Thus, we propose a forfeiture in the total amount of seven hundred fifty dollars (\$750).<sup>18</sup>

8. *License Renewal Application.* In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.<sup>19</sup> That section provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.<sup>20</sup> If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application "on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted."<sup>21</sup>

9. We find that the Licensee's violations of Section 73.3539 of the Rules and Section 301 of the Act do not constitute "serious violations" warranting designation for evidentiary hearing. Moreover,

<sup>15</sup> See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) ("*Forfeiture Policy Statement*"), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

<sup>16</sup> A broadcast station requires an authorization from the Commission to operate. See 47 U.S.C. § 301.

<sup>17</sup> 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(4).

<sup>18</sup> See, e.g., *Calvary Baptist Church*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 13074, 13076 (MB 2007) (\$750 NAL issued to licensee of FM Translator station for late filing of renewal application and two separate periods of unauthorized operation).

<sup>19</sup> 47 U.S.C. § 309(k).

<sup>20</sup> 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

<sup>21</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

we find no evidence of violations that, when considered together, constitute a pattern of abuse.<sup>22</sup> Further, we find that FM Translator Station K232CL served the public interest, convenience, and necessity during the subject license term. We will, therefore, grant the license renewal application below.

#### IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, that North Custer Radio, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of seven hundred fifty dollars (\$750) for its apparent willful violation of Section 73.3539 of the Commission's Rules and apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended.

11. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release date of this *NAL*, North Custer Radio, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the *NAL*/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the *NAL*/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).

13. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington D.C. 20554, ATTN: Peter H. Doyle, Chief, Audio Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. No. referenced above.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>23</sup>

<sup>22</sup> For example, we do not find here that the Licensee's Station operation "was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies." *See Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198 (1971). Nor do we find on the record here that "the number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Heart of the Black Hills Stations*, 32 FCC 2d at 200. *See also Center for Study and Application of Black Economic Development*, Hearing Designation Order, 6 FCC Rcd 4622 (1991), *Calvary Educational Broadcasting Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

<sup>23</sup> *See* 47 C.F.R. § 1.1914.

16. IT IS FURTHER ORDERED, pursuant to Section 309(k) of the Communications Act of 1934, as amended, that the license renewal application of North Custer Radio, Inc. for FM Translator Station K232CL, Challis, Idaho (File No. BRFT-20080528ABU) IS GRANTED.

17. IT IS FURTHER ORDERED that a copy of this *NAL* shall be sent, by First Class and Certified Mail-Return Receipt Requested, to Mr. Jim Hone, North Custer Radio, Inc., P.O. Box 36, Challis, Idaho 83226.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau